DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. RONNIE KEEN Respondent	Case Nos.: I-00-10183 I-00-10213

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

I. Introduction

On May 8, 2000, the Government served a Notice of Infraction (No. 00-10183) charging Respondent Ronnie Keen with violating 21 DCMR 502.1, which requires persons who undertake land disturbing activities to obtain a permit. The Notice of Infraction asserted that the infraction had taken place on May 3, 2000 at 1231/1233 Kenilworth Avenue, N.E., and sought a fine of $500.00.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code § 6-2715). Accordingly, on June 5, 2000, this administrative court issued an order finding Respondent in default, assessing the statutory penalty of $500 authorized by D.C. Code § 6-

2704(a)(2)(A) and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Code § 6-2712(f).

The Government then served a second Notice of Infraction (No. 00-10213) on June 15, 2000. Respondent also did not answer that Notice within twenty days of service. Accordingly, on August 4, 2000, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and assessing total penalties of $1,000.00 pursuant to D.C. Code §§ 6-2704(a)(2)(A) and 6-2704(a)(2)(B). The Final Notice of Default also set September 6, 2000 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at the hearing to contest liability, fines, penalties or fees.

All parties appeared for the September 6 hearing. Carlos Fields, the inspector who issued the Notice of Infraction, testified on behalf of the Government, and Mr. Keen testified on his own behalf. Based upon the testimony at the hearing, my evaluation of the credibility of the witnesses and the exhibits introduced into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Mr. Keen is the owner of a vacant lot at 1231/1233 Kenilworth Avenue, S.E. Before purchasing the lot, he had been hired by its previous owner to clear it of materials that had been illegally dumped there. Mr. Keen's cleanup efforts continued after he purchased the lot. On May 3, 2000, Mr. Fields observed a large pile of dirt on the lot. He took several pictures of that

pile, which are in evidence as Petitioner's Exhibit 100 ("PX-100"). Mr. Keen admits that he created that pile after he took title to the property. He believed that the prior owner had obtained a permit authorizing land disturbing activity at the lot, and he believed that permit authorized his own efforts to clear the lot and to remove contaminated dirt and other debris. Consequently, he did not obtain a new permit authorizing him to do so.

Mr. Keen admitted receiving the Notices of Infraction. He did not file timely answers because he and others in his office had overlooked them.

III. Conclusions of Law

By creating a pile of soil on his property, Mr. Keen engaged in "land disturbing activity" within the meaning of the applicable regulations. "Land disturbing activity" is defined to include "any earth movement or land change which may result in soil erosion from water or wind and the movement of sediments in the District of Columbia, including . . . filling of land . . . ." 21 DCMR 599.1. The regulations define "landfilling", which I interpret to be the equivalent of "filling of land," as "any act by which soil is deposited, placed, or pushed, where it had not previously been located." *Id.* Thus, by placing or pushing soil on the lot where it had not previously been located, Mr. Keen engaged in landfilling; his activities, therefore, satisfied the definition of "land disturbing activity."

It is undisputed that Mr. Keen did not have a permit authorizing him to engage in land disturbing activities at his lot. His actions, therefore, violated 21 DCMR 502.1, which provides:

"No person may engage in any land disturbing activity on any property within the District *until that person* has secured a building permit from the District." (Emphasis added.) By its express terms, the regulation precluded Mr. Keen from relying upon any permit that may have been issued to the prior owner of the property.[1] The person who is engaging in the land disturbing activities is the one who must obtain the permit, and Mr. Keen did not do so.[2]

The Civil Infractions Fine Schedule authorizes a fine of $500.00 for violations of §502.1. *See* 16 DCMR 3234.1(a). I will not impose the full amount of the fine in this case, however. Mr. Keen's violation was inadvertent and was caused by his good faith, but mistaken, belief that a prior permit authorized his land disturbing activity. There is also no record evidence that Mr. Keen has a prior record of violations. For these reasons, I will reduce the authorized fine of $500.00 to $250.00.

The Civil Infractions Act, D.C. Code § 6-2712(f), requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it on time. If a party can not make such a showing, the statute authorizes imposition of a penalty equal to the amount of the proposed fine. D.C. Code §§ 6-2704(a)(2)(A), 6-2712(f). If a recipient fails to answer a second Notice of Infraction without good cause, the authorized penalty doubles. D.C. Code §§ 6-2704(a)(2)(B), 6-2712(f). Mr. Keen has not demonstrated good cause for his failure to answer

[1] Mr. Keen made no effort to demonstrate that any permit that may have been issued to the prior owner of the property had been transferred to him.

[2] When work is to be done for the property owner by a contractor, the property owner (or his or her authorized representative) is responsible for securing a permit. 21 DCMR 599.1 (definition of "Permit Applicant"). When read in conjunction with § 502.1, this means that a permit issued to a property owner will authorize a contractor's work at the property.

the Notices of Infraction. His explanation that he and his office staff overlooked them provides no basis for reducing the statutory penalty. Respondents who do not pay attention to Notices of Infraction cannot be rewarded for their inattention. Accordingly, I will impose the full penalty of $1,000.00 for Mr. Keen's failure to answer the Notices of Infraction.

IV. Order

Based on the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that Respondent shall pay a total of **ONE THOUSAND TWO HUNDRED FIFTY DOLLARS ($1250.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ 6-5-01

John P. Dean
Administrative Judge